

1 RICHARD G. KLEINDIENST
Attorney General
2 DAVID L. NORMAN
Assistant Attorney General
3 FRANK E. SCHWELE
4 ALEXANDER C. ROSS
ELLIOTT D. McCARTY
5 Attorneys, Department of Justice
JAMES L. BROWNING, JR.
6 United States Attorney
7 DAVID P. BANCROFT
Assistant United States Attorney
8 450 Golden Gate Avenue, 16th Floor
San Francisco, California 94102
9 Telephone: (415) 556-2309
10 Attorneys for Plaintiff
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Filed
9/22/72

12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

14			
15	UNITED STATES OF AMERICA,	)	
16		)	
17	Plaintiff,	)	
18		)	CIVIL ACTION NO.
19	v.	)	C-71-1163 ACW
20		)	
21	YOURITAN CONSTRUCTION COMPANY,	)	PLAINTIFF'S PROPOSED
22	a corporation; SHU TSUN TAN,	)	FINDINGS OF FACTS,
23	JOAN E. CHANG TAN, individually	)	CONCLUSIONS OF LAW
24	and d/b/a TAN CONSTRUCTION COMPANY,	)	AND DECREE
25		)	
26	Defendants,	)	
27		)	

28 INTRODUCTORY STATEMENT

29 The United States instituted this action on June 16,
30 1971, pursuant to Title VIII of the Civil Rights Act of 1968,
31 42 U.S.C. 3601 et seq., alleging that (1) the defendants
32 have engaged in conduct constituting a pattern or practice
of resistance to the enjoyment of rights secured by 42 U.S.C.
3604 and that (2) the defendants have denied a group of

1 persons rights granted by Title VIII, which denial raised an
2 issue of general public importance. The Government's com-
3 plaint prays for injunctive and affirmative relief. In their
4 answer, the defendants denied the material allegations of the
5 complaint. Trial was held on July 17-21 and July 31-
6 August 3, 1972. On the basis of the evidence adduced at
7 trial, and pursuant to Rule 52 of the Federal Rules of Civil
8 Procedure, the Court now makes the following Findings of
9 Fact and Conclusions of Law:
10

11 FINDINGS OF FACT

12
13 The Defendants

14 1. The defendant Tan Construction Company is owned
15 and operated by the defendant T. S. Tan (hereinafter "Tan"
16 or defendants). Tan operates and owns in whole or in part
17 11 apartment buildings in and near the City of Palo Alto,
18 California containing 1133 rental units.* / The first of
19 these buildings began operations in 1959 and others have been
20 opened at various times since then.
21

22 2. The rental of the apartments ranges from \$120
23 per month for an unfurnished one-bedroom apartment to far
24 higher amounts for larger and more luxurious units. (See
25 Plaintiff's Exhibit 5.) At the time of the filing of this
26

27 * / Information relative to the name, location and number of
28 units at each apartment complex, the types of bedroom
29 accommodations, rental price range and security deposit
30 requirements, when the buildings began operation, the number
31 of blacks at the building at the time of suit and where
32 applicable, the date of the first black tenant at the build-
ing, is set forth in Appendix "A" to these findings.

1 action, six of Tan's buildings had no black occupants and
2 had never had any. One of those six was the Americana,
3 which opened in October 1969 with 286 units and by the time
4 of the suit had 486 units available for occupancy (though
5 other parts of the complex were in various stages of con-
6 struction). As of June 1971, when this action was filed,
7 Tan's other five buildings contained 14 units occupied by
8 black persons, these units representing 1.2% of the 1133 in
9 all of Tan's buildings. However, 11 of the above 14 units
10 were located in three buildings (two large and one small)
11 near East Palo Alto which contains the only concentrated
12 black residential area^{*/} in the locality served by Tan's
13 buildings. (See Plaintiff's Exhibit 5 and Defendants'
14 Exhibit L.)
15

16
17 3. Each of defendants' apartment buildings is op-
18 erated by a resident manager, most of whom are helped out
19 by relief managers on their days off. Two of the buildings
20 have assistant managers (Americana and Tan Village.) The
21 resident managers report to Tan's central office in Palo
22 Alto and their immediate superior is Mr. Zee,^{**/} the defen-
23 dants' general property manager. Mr. Zee has held this
24 position since 1968. (RT - II - 109) All of the resident
25 managers and other persons employed to assist in the tenant
26 application process have been white persons. (Pl. Ex. 5, p.19)
27
28

29 ^{*/} See Plaintiff's Exhibits 6 and 6-A.

30 ^{**/} Mr. Tan retained his supervisory responsibility over the
31 resident manager of the Americana (See testimony of Mr. Zee.)
32

1 4. Mrs. Louise Boatwright was the resident manager
2 at the defendants' Americana complex between October 1969
3 and April 1971. Previously she had held this position at
4 Sunshine Gardens from October 1965 to March 1966, at Tan
5 Manor from March 1966 to October 1969 and at Tan Village
6 from May 1971 to September 1971. Mrs. Boatwright was ini-
7 tially hired by Mr. Tan. Unlike the rest of defendants'
8 apartment complexes the Americana employs "rental agents"
9 who work under the supervision of the resident manager and
10 whose job is to show prospective tenants around the complex
11 and present those interested in application to the resident
12 manager for processing (RT-I-79; RT-II-39).
13

14
15 5. At the trial, four of Tan's former employees who
16 had worked at the Americana complex during the time Mrs.
17 Boatwright was the resident manager, testified that Mrs.
18 Boatwright had instructed them to discriminate against black
19 persons and members of other minority groups in the rental
20 of apartments at the complex, and had made a number of
21 statements indicating that it was defendants' policy and
22 disposition to avoid renting to black tenants.
23

24 6. Specifically, Linda Tappan testified that on one
25 occasion Mrs. Boatwright told her that "we don't rent to
26 colored"; that, at a meeting of rental agents, Mrs. Boatwright
27 stated that it was the defendants' policy not to rent apart-
28 ments to black persons or Mexican-Americans because they
29 were undesirable tenants and that Mrs. Boatwright at this
30 meeting suggested ways in which such minority applicants
31 could be discouraged from renting. (e.g. show them the more
32

1 expensive apartments, give a less complete tour of the
2 complex, and misrepresent the availability of apartments).
3 In addition, Mrs. Tappan testified that as a means of
4 insuring the implementation of the defendants' discrimina-
5 tory policy, Mrs. Boatwright told the rental agents that
6 they would not receive a commission for renting to a
7 black or other minority person (RT-I-2-10, 23, 38, 62).^{*/}
8 Mrs. Tappan was a credible witness.

10 7. Miss Lynette Watkins testified that Mrs. Boat-
11 wright admonished her on one occasion for showing apart-
12 ments to a black person; that Mrs. Boatwright explained
13 to Miss Watkins that it was the policy of the defendants
14 not to rent to black persons because of their race and
15 that the entry of black tenants would conflict with
16 efforts to attract and maintain a high-class, white
17 clientele at the Americana; that Mrs. Boatwright instructed
18 Miss Watkins to implement this policy by various devices
19 to discourage minority applicants; (e.g. emphasizing the
20 high rental rates, the amount of deposit, credit checks,
21 and giving limited tours of the complex) RT-I-98-102;
22 that the assistant manager of the Americana was present
23 on one occasion when these policies were related and later
24 confirmed them to Miss Watkins; (RT-I-104, 105, 109, 123,
25 153-154) and that Mrs. Boatwright advised Miss Watkins
26 that black persons were not hired at the Americana except
27 in menial jobs. (RT-I-105, 107-108). While defendants
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29
30

31 ^{*/} RT-I refers to volume I of the Reporter's Transcript
32 of the trial.

1 made an intensive attack on Miss Watkins' credibility,
2 the Court finds her to be a credible witness.

3 8. Mrs. Betty Summers testified that Mrs. Boat-
4 wright said that blacks were to be shown around the
5 complex and treated with courtesy, but that when the
6 question of rental application arose Mrs. Summers was to
7 tell the black prospect that it would take two weeks to
8 make a credit check on his or her application. Mrs.
9 Summers further testified that she was not told to give
10 similar information to white applicants (RT-II-25-27, 48);
11 that in her experience at the complex, the apartment manage-
12 ment did not check the references of white applicants;
13 and that she was told by Mrs. Boatwright that she preferred
14 white tenants at the Americana and hoped it would stay
15 that way (all-white) (RT-II-27-29, 37). Mrs. Summers
16 was a credible witness.

17 9. Mrs. Marjorie Dwyer, another former rental
18 agent, testified that on her first day of work she asked
19 Mrs. Boatwright about the Americana's racial policies and
20 that Mrs. Boatwright replied that they preferred not to
21 rent to black prospects and that such preference was
22 implemented by closely scrutinizing their application in
23 hope of finding a "loophole." (RT-I-77-80). Mrs. Dwyer
24 was a credible witness.

25 10. Kenneth Romines, a former social director and
26 part-time rental agent, testified that he was told by
27 Stephen Weith, another rental agent at the Americana,
28 that they were not supposed to rent apartments to blacks

1 and that they were to discourage such applicants, among other
2 ways, by telling black prospects there were no vacancies
3 when such a representation was untrue; that this policy was
4 confirmed by a second rental agent, Miss Bishop (RT-II-5-9,
5 13-16, 18); and that Mrs. Boatwright once stated that she
6 did not want any "fairies or niggers" living in the apart-
7 ment complex. (RT-II-9-11). Mr. Romines was a credible
8 witness.
9

10 11. Four of these former employees testified concern-
11 ing their participation in or observance of several instances
12 when the above policies were put into practice: For example,
13 a black couple was told there were no one-bedroom apartments
14 available when in fact there were (RT-I-48-49); a black
15 apartment seeker (Douglas Robinson) was told by a rental
16 agent that the apartment management had a discriminatory
17 policy and that he would probably be better off not applying
18 for an apartment and that he should apply at Tan Village
19 (RT-I-13-17, 33-34, 40-41); three different groups of black
20 applicants were discouraged by emphasis on the high price of
21 the apartments, the deposit, the background check on their
22 financial status and told no apartments were available when
23 in fact there were (RT-I-110-111). In a related incident
24 pertaining to defendants' employment practices, Mrs. Boat-
25 wright refused to interview a female black job applicant for
26 a vacant rental agent position.*/ (RT-I-107-108).
27
28
29

30 */The deposition testimony of Catherine Hambley is to the
31 effect that discrimination in employment was practiced at the
32 defendants' central office against two Chinese applicants for
positions as bookkeepers. Plaintiff's Ex. 4d, at p. 5, lines
4-9.

1 12. In response, the defendants offered the testimony
2 of Mrs. Boatwright, who denied giving discriminatory in-
3 structions to anyone, and testimony of other former Ameri-
4 cana rental agents, who said they had received no instruc-
5 tions from Mrs. Boatwright one way or the other, on the
6 subject of the apartment complex's racial policies and
7 contradicted the testimony of some Government witnesses on
8 some specifics. One of defendants' witnesses, Mrs. Janine
9 Colston, also a former Americana rental agent, testified
10 that Mrs. Boatwright told of defendants' policy against
11 "undesirables" at one meeting but asserted that only
12 "hippies," "drug types" and "barefoot types" were mentioned
13 as "undesirable." However, she also testified that Mrs.
14 Boatwright personally lumped black persons and hippies into
15 the same "undesirable" category. (RT-II-378-379).

16
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18 13. Although there is some disagreement among the
19 four former employees called by the Government as to precise
20 details of their experiences, their testimony is supported
21 by the complete absence of black tenants at the Americana
22 during the time in question, by the testimony of other wit-
23 nesses who had rental experiences with defendants which
24 conformed to the methods suggested by Mrs. Boatwright for
25 implementing defendants' discriminatory policy (see Findings
26 16-23, infra.) and by the Court's observation of the
27 demeanor and credibility of all the witnesses.
28
29

30 14. Several of the Government's witnesses stated
31 that Mrs. Boatwright attributed her discriminatory instruc-
32 tions to her supervisors, Mr. Tan and Mr. Zee, who in turn

1 denied giving such instructions to Mrs. Boatwright. For
2 reasons set forth in Conclusion of Law No. 7 , infra, it is
3 not necessary for the Court to resolve this conflict.
4 Mrs. Boatwright's behavior resulted from defendants' failure,
5 by design or by thoughtlessness, to supervise Mrs. Boat-
6 wright and their failure to provide an objective, reviewable
7 application procedure that would prevent black applicants
8 from being subjected to their agents' racially discriminatory
9 preferences.
10

11 15. Accordingly, the Court finds that Mrs. Boatwright
12 during the course of her employment, gave discriminatory
13 instructions to rental agents working under her at the
14 Americana Apartments and that these instructions were on
15 various occasions implemented by rental agents, resulting in
16 the denial of apartments to blacks because of race.
17

18 16. In addition to the testimony regarding the
19 discriminatory instructions given by the resident manager
20 of the Americana to her subordinates, the United States
21 introduced evidence of discriminatory treatment of blacks
22 at other of defendants' apartment complexes. A consider-
23 able proportion of this evidence consisted of the testimony
24 of black and white "testers" ^{*/} who visited various of

25
26 */ These testers operated under the auspices of two "fair
27 housing" groups -- one the Mid-Peninsula Citizens For Fair
28 Housing and the other an informal group at the Stanford
29 Business School. The purpose of these groups was to
30 ascertain whether persons operating various apartments
31 were treating black and white applicants alike. Their
32 activities are a reasonable means by which citizens may
ascertain the compliance status of landlords with fair
housing laws and evidence of their activities is an appro-
priate method of demonstrating the policies and practices
of a particular landlord in a proceeding of this nature.
See Conclusions of Law Nos. 12-14, infra.

1 defendants' buildings to inquire about the availability
2 of apartments for rent. The testers' method was to have
3 a black applicant and a white applicant usually of the
4 same age and sex, make similar inquiry at an apartment
5 on the same day within minutes of each other. In general,
6 the "tester" witnesses appeared to be credible and
7 responsible, and the Court believes their accounts of
8 what took place.
9

10 17. The experiences to which the "testers" testified
11 fall into two main categories: first, whites asked if a
12 credit check was necessary and were told that it was not,
13 and that they could move in immediately or within a few
14 days, while blacks were told that a credit check was
15 necessary and it would take a period of time ranging from
16 a few days to a week; second, black applicants were told
17 that no apartments were available while white applicants
18 on virtually contemporaneous occasions were advised that
19 apartments were available.^{*/} In response to this testimony,
20 the defendants offered the testimony of resident managers
21 and rental agents who had dealt with the witnesses for
22 the United States. In general, the defense witnesses
23 stated that they had never "waived" a credit check require-
24 ment, and denied that they had told black applicants that
25 apartments were not available when in fact they were. In
26 some instances, defendants contested the availability of
27 of apartments at the time the blacks applied.
28
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30

31 ^{*/} The credit check and availability experiences are
32 summarized in Appendix "B".

1 18. With respect to alleged discrimination by
2 defendants in relation to representations about credit
3 checks, there is no evidence other than the statements of
4 witnesses. Accordingly, the Court must weigh the credi-
5 bility of the witnesses. In doing so, the Court considers
6 the following: Mr. Zee, the defendants' general property
7 manager, testified that he had instructed all resident
8 managers to tell prospective applicants that a credit
9 check was required, even if they did not ask. (See
10 testimony of Mr. Zee.) The resident managers as a general
11 rule testified that they did no credit check of their own,
12 but that they simply passed applications and lease agree-
13 ments on to the central office and that they knew of no
14 one who had been rejected by the central office (e.g.,
15 see testimony of Mrs. Boatwright). Mr. Zee testified that
16 he sometimes did credit checks, but to his recollection
17 no applicant had ever been rejected for insufficient credit.
18 In fact, Mr. Zee testified that his philosophy was to let
19 people in and give them a chance to pay. From this the
20 Court draws the inference that, subject to discrimination
21 against blacks and other racial minorities, it has been
22 Tan policy to rent to all who fill out an application
23 without regard to the credit information, relying on
24 defendants' ability to evict tenants who do not pay (see
25 testimony of Mr. Zee).

30 19. Common sense dictates, and the Court finds,
31 that resident managers using normal business practices
32 would not scare off apartment applicants by mentioning

1 a credit check which was, in fact, meaningless. Accordingly,
2 the Court finds that, under the circumstances, any mention
3 of a credit check by resident managers was to discourage
4 applicants, there being no other apparent reason for such
5 a procedure to be mentioned. Indeed, this is the explana-
6 tion of the defendants' practices which was provided by the
7 former Americana rental agents, who related that the "credit
8 check" device was simply a means of discouraging blacks */
9 or other people whom Mrs. Boatwright did not like, such as
10 long-haired hippies. (RT-I-13-14, 98, RT-II-27, 48, RT-
11 III-379 and testimony of Mrs. Boatwright.) The racial
12 statistics at defendants' apartments also support the infer-
13 ence that this discouragement device was used against black
14 applicants, and corroborate the testimony of the black
15 testers who stated they were told there was a credit check.
16 Accordingly, the Court finds that defendants engaged in a
17 selective screening practice which had the effect of exclud-
18 ing blacks from their various apartment complexes.
19

20
21 20. With respect to the conflict in testimony on
22 the issue of apartment availability, the Court is aided
23 by the defendants' records (Plaintiff's Exhibit 1), which
24 reflect vacancies, by apartment type, by apartment number,
25 and by building, at various Tan complexes during the times
26 of the incidents at issue. These records consist of
27

28
29 */ William Brandt, one of the white testers, also testified
30 on deposition that the resident manager at Tan's Sunshine
31 Gardens complex acknowledged in 1967 that the credit check
32 was used as a racial screening device. (See Plaintiff's
Exhibit 4-A, RTWB-10-11, 53-57.)

1 reports filed weekly by Tan's resident managers to the
2 central office showing (a) the apartments that are vacant
3 at the end of the week, (b) the apartments rented during
4 the week, and (c) the apartments which are expected to
5 become vacant in the near future. The records for Tan
6 Village, Tan House and Tan Manor reflect the existence
7 of vacancies at the time black testers were told there
8 were none, and the testimony is undisputed that vacancies
9 existed at the Americana at all relevant times. All of
10 the foregoing corroborates the testimony of the white
11 testers at these complexes; who related that they were
12 told apartments were available.^{*/}

13
14
15 21. The defendants attempted to counter the evidence
16 of the white testers and their own weekly vacancy records
17 by maintaining that these records, while showing vacancy,
18 could not be relied upon to demonstrate availability.
19 For example, Mr. Zee, the general property manager, and
20 Mrs. Roberts (a former resident manager of Tan Village)
21 testified that even though the report covering January 24,
22 1971 shows that 9 two-bedroom apartments (4 furnished and
23 5 unfurnished) were vacant on that date at Tan Village,
24 the date one of the black testers (i.e. Johnson) was turned
25

26
27 ^{*/} With respect to a "testing" incident on February 7, 1971
28 at Tan Plaza International, defendants claimed that the
29 apartment in question was rented to white tenant Lawrence
30 Hockstein in the few minutes between the time white tester
31 Gross was told there was a vacancy and black tester Johnson
32 was told there was none. Gross testified, however, that
he telephoned later in the day and was told by the manager
that the apartment was still available. (RT-I-180).

1 away, they had independent knowledge that these apartments
2 were not available at the time. To support this contention,
3 the defendants offered documents executed at the time the
4 apartments in question had been vacated, */ purporting to
5 show the "messy" condition of the apartments at the time
6 they were vacated. Defendants' claim that as of
7 January 24, 1971, the resident manager and her assistants
8 were unable to prepare these apartments for occupancy
9 because of a lack of manpower. **/ The Court finds,
10 however, that apartments were available at Tan Village
11 on January 24, 1971 for the following reasons: (a) The
12 purported time lag (5 months in one instance; 2 months
13 and less in the others) between termination and prepara-
14 tion for occupancy is inconsistent with defendants' normal
15 business practice, expressed in an interoffice memo, ***/
16 of taking every possible step to avoid even a day between
17
18
19

20 */ One apartment had been vacated in August 1970 (Defen-
21 dants' Exhibit AF); others in November 1970 (Defendants'
22 Exhibits AD, AE and AG); the remaining ones in January 1971
23 (Defendants' Exhibits AB and AZ).

24 **/ This claim is inconsistent with defendants' own business
25 records inasmuch as Tan instructed his apartment managers
26 to contact the central office immediately if he or she
27 needed additional cleaning help and, if that was not suc-
28 cessful, the central office was to retain outside help.
29 (See Plaintiff's Exhibit 9, memorandum from Tan to apartment
30 managers dated September 17, 1968.)

31 ***/ Plaintiff's Exhibit 9, which includes, among other
32 things, a memo from Mr. Tan to all resident managers dated
September 17, 1968, states:

"When a tenant moves out on Wednesday night
and the new one doesn't move in until Friday
morning, we worry I hope that all of
our managers will watch every unit and watch
the renting carefully so that not too many
days elapse between the moving out and the
moving in of tenants."

1 termination and new occupancy; (b) the Tan Village vacancy
2 reports^{*/} show that during the week ending January 10, 1971,
3 ten apartments, three of which had been vacant for less
4 than two weeks were rented;^{**/} (c) the black tester's
5 white counterpart was told there was a vacancy; and (d)
6 the discriminatory pattern at Tan Village parallels that
7 to which the former employees at the Americana testified,
8 and which was disclosed at Tan's other complexes.
9

10 22. The experiences of the black testers were also
11 consistent with those of bona fide black applicants at
12 Tan buildings:
13

14 (a) On September 11, 1969, Mr. Charles
15 Fitch, black, inquired as to the avail-
16 ability of an unfurnished one-bedroom
17 apartment at Tan House. He was told by
18 the resident manager, Mrs. Laura Leland,
19 that none would be available until
20 September 27 and was not shown such an
21 apartment. Having seen a sign outside
22 the complex which he understood to be
23 advertising an available apartment at
24 Tan House.^{***/} Mr. Fitch became suspicious
25

26 ^{*/} Plaintiff's Exhibit 1(A-4), weekly vacancy report of
27 January 10, 1971.

28 ^{**/} The December 27, 1970 weekly vacancy report states that
29 apartments Nos. 72/114, 91/204, and 89/101 were vacated
30 during the prior week. See Plaintiff's Exhibit 1(A-4).

31 ^{***/} There is considerable dispute as to the wording of the
32 sign seen by Mr. Fitch, but whatever the wording, Mr. Fitch
took it to indicate a vacancy existed and complained to
the fair housing group.

1 and complained that day to the Mid-
2 Peninsula Citizens for Fair Housing.
3 (RT-II-81-87). A white tester from
4 MCFH (Polly Bredt) went to the complex
5 later that day and inquired about the
6 availability of an unfurnished one-
7 bedroom apartment. Mrs. Leland told
8 her to come back the following day to
9 see an apartment similar to the one
10 which was soon to be available. On her
11 return the next day, Mrs. Bredt was shown
12 the apartment and told it would be avail-
13 able on September 15. In addition, she
14 was quoted a rental price for the apart-
15 ment which was \$20.00 less than quoted
16 to Mr. Fitch and to a black tester who
17 visited the complex later that day
18 (RT-II-123-127).^{*/}

21
22 In contrast, Henry Evans, a black
23 tester from the same organization was
24 told by the manager on September 12 that
25 no such apartment would be available until
26 September 20. (RT-II-150-155). Fitch
27 then called the manager of Tan House
28 on September 15, and, after identifying
29

30
31 ^{*/} The testimony of the white tester is corroborated by the
32 defendants' records, which show an anticipated vacancy for
a one-bedroom apartment at Tan House on September 15, 1969.
(See Defendants' Exhibit U.)

1 himself was told that no vacancies were
2 expected until the end of the month.
3 (RT-II-84-85).

4 (b) Mrs. Johnetta Davenport, black,
5 who had worked in the defendants' central
6 office briefly as a key punch operator,^{*/}
7 telephoned Mr. Zee, Tan's general property
8 manager at the central office, in mid-
9 August 1970 and inquired about the avail-
10 ability of unfurnished one-bedroom apart-
11 ments. Mr. Zee told her that there might
12 be such a vacancy at Tan House and that
13 several such vacancies existed at Tan
14 Village. (RT-II-59-60, 65). On or about
15 the same day as her telephone inquiry,
16 Mrs. Davenport went to Tan House and was
17 told there was no one-bedroom apartment
18 available, and that one would not become
19 available until September 1.^{**/} (RT-II-
20 65-66, 70-71). Mrs. Davenport, thereupon,
21 went to Tan Village and asked to see any
22
23
24
25

26 ^{*/} Mrs. Davenport was the only black person to work for the
27 Tan organization in other than a menial position (janitor
28 or maid). She worked there for about 2 months in early
29 1970 as a temporary employment service referral. (RT-II-
59-60, 71-72).

30 ^{**/} Defendants' weekly vacancy reports at Tan House for
31 August 9 and 16, 1970, indicate that apartment 45/319, an
32 unfurnished one-bedroom apartment, was vacant during the
entire two week period. (See Plaintiff's Exhibit 1,
Part B (1)).

1 vacant apartments. Prior to disclosing
2 the type of apartment she was looking for,
3 the resident manager, Mrs. Roberts, told
4 her that there were no current vacancies.
5 However, just as she was leaving, Mrs.
6 Roberts asked her what type of apartment
7 she was interested in. When Mrs. Davenport
8 told Mrs. Roberts that she wanted an un-
9 furnished one-bedroom apartment, the latter
10 told her that there was a one-bedroom
11 furnished apartment available which could
12 be readily converted into an unfurnished
13 apartment. (RT-II-66-67, 69). The
14 Davenport incident, while perhaps less
15 compelling than the more flagrant incidents
16 of unequal treatment described earlier in
17 these Findings, corroborates Mrs. Tappan's
18 testimony (RT-I-13-17) that defendants had
19 a disposition to "steer" some black
20 applicants to their buildings in more
21 significantly integrated areas, which had
22 relatively more (though still few) black
23 tenants than defendants' all white or
24 virtually all-white buildings in white
25 residential areas. Mrs. Roberts, in her
26 trial testimony, also acknowledged that in
27 addition to Mrs. Davenport, Mr. Zee also
28 referred another black tenant to her complex.
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1 (c) Harold Milner, a black custodial
2 employee of defendants from July to
3 September 1970, testified that Mrs. Boat-
4 wright (then the resident manager at Tan
5 Manor) told an unidentified black couple
6 that no apartments were available at the
7 Americana at a time when, to his personal
8 knowledge, there were at least two.^{*/}
9 (RT-I-163-168).
10

11 23. The pattern of telling blacks that no apartments
12 were available was not uniform; a handful of blacks had
13 been accepted at defendants' buildings at the time of
14 suit and some black testers were told apartments were
15 available.^{**/} The Court finds, however, that on a sub-
16 stantial and significant number of occasions, defendants'
17 agents falsely represented to black rental applicants
18 that apartments were not available, and that they used
19 the "credit check" device to discourage blacks from rent-
20 ing. The Court finds that this racially discriminatory
21 conduct occurred because the owners and their top assistants
22 failed to take aggressive action to insure that agents
23 dealing with applicants treated everyone alike without
24 regard to race or color.
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30 ^{*/} See also the experiences of unidentified black bona fide
31 victims described earlier in Finding No. 11.

32 ^{**/} See Appendix "B".

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1 5. In weighing the evidence in this case, the
2 court recognizes that the law prohibits "sophisticated as
3 well as simple minded modes of discrimination." United
4 States v. Real Estate Development Corp., supra; Lane v.
5 Wilson, 307 U.S. 268 at 275 (1939); Gaston County v. United
6 States, 288 F. Supp. 678 (D. D.C. 1968), aff'd 395 U.S.
7 285 (1969). Racially derogatory remarks, by those in a
8 position to influence the attitude of fellow and subordinate
9 employees toward apartment applicants of a particular race,
10 can reasonably be expected to adversely affect the rental
11 opportunities of applicants. Thus, laws prohibiting dis-
12 crimination in housing because of race prohibit not only
13 for example, overt racial rejection of applicants, but
14 subtle behavior as well. United States v. Mitchell, 327
15 F. Supp. 476 (N.D. Ga. 1971) (reasonable man standard
16 applied to "subtle" statements in fair housing case).

17 6. Section 3604(a) of the 1968 Fair Housing Act
18 (42 U.S.C. 3604(a)), in addition to specifying that it
19 shall be unlawful to refuse to rent or to refuse to
20 negotiate for the rental of housing because of race, also
21 makes it unlawful to "otherwise make unavailable" housing,
22 or to deny housing because of race. The foregoing
23 phraseology appears to be as broad as Congress could have
24 made it, and all practices which have the effect of deny-
25 ing dwellings on prohibited grounds are therefore unlawful.
26 United States v. Real Estate Development Corp., supra;
27 United States v. Grooms, ____ F. Supp. ____ (No. 71-94,
28 M.D. Fla. July 28, 1972). The imposition of more burdensome
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1 application procedures, of delaying tactics, and of various
2 forms of discouragement by resident managers and rental
3 agents constitutes a violation of Section 3604(a) not only
4 by those who impose these procedural roadblocks, Hall v.
5 Freitas, 343 F. Supp. 1099, 1101 (N.D. Calif. 1972);
6 Stearns v. Fair Employment Practice Commission, 98 Cal.
7 Rptr. 467 (1971), but also by top management and owners
8 who fail to set forth objective and reviewable procedures
9 for apartment application and rental. Failure to provide
10 a black applicant with necessary and correct information
11 concerning what he must do to become a tenant discourages
12 and impedes his application and results in his exclusion
13 from the apartments because of race. United States v.
14 West Peachtree Tenth Corp., 437 F. 2d 221 (5th Cir. 1971);
15 United States v. Reddoch, supra, slip opinion at p. 24.

16 7. The discriminatory conduct of an apartment
17 manager or rental agent is, as a general rule, attributable
18 to the owner and property manager of the apartment complex,
19 both under the doctrine of respondeat superior and because
20 the duty to obey the law is non-delegable. United States v.
21 Real Estate Development Corp., supra; United States v.
22 Reddoch, supra; Williamson v. Hampton Mgt. Co., 339 F. Supp.
23 1146 (N.D. Ill. 1972); and United States v. Mitchell, 335
24 F. Supp. 1004, 1006 (N.D. Ga. 1971). As the court stated
25 in United States v. Real Estate Development Corp., supra,
26 (Conclusion of Law No. 21) (apartment case):

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31 The resident managers and managers
32 of the defendants are authorized
to represent the defendants and
can rent in no other capacity.

1 Their acts and statements, made
2 within the scope of their agency,
3 are attributable to the defendants,
4 whose duty to comply with the law
5 is non-delegable. United States v.
Reddoch, supra, slip opinion at 28;
Williamson v. Hampton Mgt. Co., 339
F. Supp. 1146 (N.D. Ill. 1972).

6 Owners and supervisors are responsible for the conduct of
7 their agents; even "silent partners" may properly be
8 enjoined, United States v. Reddoch, supra, and an injunc-
9 tion has been issued against principals for the unlawful
10 conduct of their agents even where they instructed them
11 to obey the law at regular staff meetings. United States v.
12 Mitchell, 335 F. Supp. 1004 (N.D. Ga. 1971). Accordingly,
13 where, as here, management's lack of supervision and
14 failure to establish objective and reviewable procedural
15 standards have resulted in apartments being made unavail-
16 able to blacks by agents and employees, management's
17 failure to act is in itself violative of Section 3604(a).

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20 8. As the court said in United States v. Reddoch,
21 supra, at 22-23, another apartment discrimination case:

22 "in cases of racial discrimination,
23 statistics often tell much and courts
24 listen." State of Alabama v. United
States, 304 F. 2d 583 (5th Cir. 1962)
25 aff'd 371 U.S. 37 (1962). "Nothing
26 is as emphatic as zero." United
States v. Hinds County Board of
27 Education, 417 F. 2d 852 at 858
(5th Cir. 1969).

1 Accord: Newbern v. Lake Lorelei, Inc., 308 F. Supp. 407,
2 417 (S.D. Ohio 1968) (housing); United States v. Real
3 Estate Development Corp., supra. In the present case, six
4 of defendants' eleven apartment buildings, containing 752
5 (roughly 2/3) of its 1133 rental units, have been in
6 continuous operation from various opening dates ranging
7 from March 1961 to February 1970, and none had a black
8 tenant prior to the filing of the instant suit in June
9 1971. Moreover, defendants acknowledge that no black
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1 person has ever resided at four of these six buildings.
2 The remaining five apartment buildings have been in
3 operation for varying time periods ranging from 3 to 13
4 years, but none had a black tenant until December 1967,
5 when the first black tenant moved into Tan House. At the
6 time of suit only 14 of defendants' 1133 units (or 1.2%)
7 were occupied by blacks. This evidence constitutes, at
8 least a prima facie case of racial discrimination, casting
9 a burden upon the defendant to come forward with evidence
10 to the contrary. United States v. Real Estate Development
11 Corp., supra; United States v. Reddoch, supra; Parham v.
12 Southwestern Bell Telephone Co., 433 F. 2d 421 at 426
13 (8th Cir. 1970); Jones v. Lee Way Motor Freight, Inc.,
14 431 F. 2d 245 at 247, 248 (10th Cir. 1970).

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17 9. The legal effect of the foregoing statistical
18 evidence is reinforced by the absence of an objective
19 and uniform rental application procedure. Just as vague
20 and undefined employment standards which result in whites,
21 but not blacks, being hired are unlawfully discriminatory,
22 so too are arbitrary and uncontrolled apartment rental
23 procedures which produce otherwise unexplained racially
24 discriminatory results. See Brown v. Gaston County Dyeing
25 Mach. Co., 457 F. 2d 1377 at 1383 (4th Cir. 1972) (employ-
26 ment).

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29 10. The statistics set forth in paragraph 8 raise
30 the inference that the arbitrary procedural roadblocks
31 placed in the path of black rental applicants were put
32 there because of race, and not neutral thoughtlessness.

1 However, it is of no solace to plaintiffs, and no defense
2 for the defendants, if the discriminatory machinery they
3 put in motion by failing to control their agents resulted
4 in racial discrimination without any malice on their
5 part. Courts look to the substance rather than to form
6 of transactions, United States v. Beach Associates, Inc.,
7 286 F. Supp. 801 (D. Md. 1968), and may find racial dis-
8 crimination, although the ostensible purpose was non-
9 racial. United States v. West Peachtree Tenth Corp., supra;
10 United States v. Reddoch, supra, slip opinion at 22.
11 Practices with discriminatory consequences are prohibited,
12 irrespective of the defendant's motivation. Griggs v.
13 Duke Power Co., 401 U.S. 424 (1971) (employment); United
14 States v. Hunter, supra (housing); United States v. Grooms,
15 supra (housing); United States v. Real Estate Development
16 Corp., supra, slip opinion pp. 8-9. "[I]t is of little
17 consolation to an individual denied [equal housing oppor-
18 tunity] that it was done in good faith," United States v.
19 Real Estate Development Corp., supra; Burton v. Wilmington
20 Parking Authority, 365 U.S. 715 at 725 (1961), for "the
21 arbitrary quality of thoughtlessness can be as disastrous
22 and unfair to private rights and public interest as the
23 perversity of a willful scheme." Southern Alameda Spanish
24 Speaking Organization v. City of Union City, 424 F. 2d
25 291, 296, note 9 (9th Cir. 1970).

30 11. Defendants have instructed their apartment
31 managers to seek prospective tenants who fit in with present
32 tenants. Prospective compatibility with other tenants is

1 not an appropriate rental consideration where its applica-
2 tion would have a discriminatory racial impact. See Con-
3 clusion of Law No. 7 in United States v. Reddoch, supra.
4 In apartment rental cases, a compatibility standard should
5 be carefully scrutinized when some of defendants' complexes
6 have no black tenants and the few blacks renting from
7 defendants are concentrated in complexes located near a
8 black residential area. A former rental agent at the
9 Americana, all white at the time of suit and the largest
10 apartment complex operated by defendants, acknowledged
11 the traditional twin fears of "white flight" and inability
12 to attract white prospects at the complex in the future
13 if blacks moved in. Under these circumstances, a compati-
14 bility standard tends to operate against a black applicant
15 and to promote the continued all-white character of certain
16 of defendants' complexes and the gradual change of racial
17 character in those apartment complexes of defendants
18 located near an area of black concentration. As the court
19 said in United States v. Reddoch, supra,

23 Just as a "vote of membership" require-
24 ment operates against blacks where all
25 those voting are white, Cypress v.
26 Newport News General Memorial Hospital,
27 375 F. 2d 648, 655, 656 (4th Cir. 1967);
28 Hawkins v. North Carolina Dental Society,
29 355 F. 2d 718, 723, 724 (4th Cir. 1966),
30 so a compatibility doctrine such as
31 enunciated by defendants assume white
32 resistance to living with black tenants.

12. Evidence of the experiences of white and black
"testers" or "checkers" has been uniformly admitted into
evidence to show the existence of a discriminatory policy.

1 Evers v. Dwyer, 358 U.S. 202 (1958) (buses); Pierson v.
2 Ray, 386 U.S. 547 (1967) (bus terminals); Newbern v. Lake
3 Lorelei, Inc., supra (housing); Harris v. Jones, 296 F. Supp.
4 1082 (D. Mass. 1969) (housing); Brown v. Ballas, 331 F. Supp.
5 1033 (N.D. Tex. 1971) (housing); Williamson v. Hampton
6 Management Co., supra at p. 1148 (housing); Seaton v. Sky
7 Realty Co., C.A. No. 70-C-972, ____ F. Supp. ____ (N.D.
8 Ill. June 25, 1972) (housing). As the Supreme Court said
9 in Evers v. Dwyer, supra, at 204, "that the appellant may
10 have boarded this particular bus for the purpose of
11 instituting this litigation is not significant." The
12 experiences of white apartment seekers are the most
13 effective means to determine white standards or to ascertain
14 whether a vacancy existed when blacks applied. Martin v.
15 Bowers, 334 F. Supp. 5, 7 (N.D. Ill. 1971). Courts have
16 recognized that members of fair housing groups who engage
17 in "testing" to assist non-white persons to secure housing
18 are public spirited citizens performing a useful function.
19 Mitchell v. Quain, C.A. No. 70-C-1640 (N.D. Ill. March 30,
20 1971).

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24 13. 42 U.S.C. 3604(a) makes it unlawful to refuse
25 to rent an apartment after the making of a bona fide offer,
26 to refuse to negotiate for rental, and to otherwise
27 make unavailable or deny an apartment, because of
28 race. The sentence is so constructed that the
29 "bona fide offer" requirement grammatically applies only
30 to refusals to rent, and not to the remainder of the
31 prohibition. Moreover, 42 U.S.C. 3604(d) makes it unlawful
32 to misrepresent the availability of an apartment because

1 of race, and this section contains no requirement of a bona
2 fide offer. Accordingly, the requirement of a bona fide
3 victim is limited to discriminatory refusals to rent (or
4 to sell, in the case of single family home), Dubose v.
5 Gorey Realty Co., C.A. No. 69-C-422 (N.D. Ill. June 17,
6 1969), and has no application to the other sections of the
7 statute.
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9 14. Evidence provided by "testers" is particularly
10 useful in "pattern or practice" type cases, in which the
11 policy of the defendants and the vindication of the public
12 interest are at issue, rather than any prompt private
13 remedy. In Bell Realty and Ins. Co. v. Chicago Comm. on
14 Human Relations, 266 N.E. 2d 769, 774 (Ill. App. 1971),
15 the Court said:
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17 The fact that a person was testing is
18 an evidentiary fact. The evidence in
19 the instant case supports the conclusion
20 that the broker was not aware that
21 Hamilton was testing, and the further
22 conclusion that Hamilton was denied a
23 listing solely because of his race.

24 Where the defendant does not know that a person, whether
25 black or white, is "testing," the defendant's treatment
26 of the tester is persuasive as to what he would do in the
27 case of a bona fide applicant. Since equity looks to the
28 future, and an injunction may lie even if no past violation
29 is shown if defendant's conduct threatens a future viola-
30 tion, United States v. Reddoch, supra, slip opinion at
31 p. 27, and cases cited, defendants' different treatment of
32 black and white testers would justify injunctive relief
under 42 U.S.C. 3613.

1 15. To prevail in this case under the provisions
2 of 42 U.S.C. 3613, the Attorney General must show either:

3 --- (a) a pattern or practice of
4 resistance to the enjoyment of the
5 right to equal housing opportunity;

6 or

7
8 (b) a denial of such rights to a
9 group of persons, as to which denial
10 the Attorney General has made a deter-
11 mination of general public importance.

12 United States v. Hunter, supra; United States v. Reddoch,
13 supra; United States v. Real Estate Development Corp.,
14 supra.

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16 16. "The words 'pattern and practice' are not terms
17 of art, but have their generic meaning. It is incumbent
18 upon the government to show that any discriminatory act
19 by the defendant was not an isolated, accidental or
20 peculiar departure from a nondiscriminatory norm." United
21 States v. Reddoch, supra, at 25-26; United States v. Real
22 Estate Development Corp., supra. The number of Negroes
23 rejected is not determinative of the presence of such a
24 pattern or practice. United States v. Ramsey, 331 F. 2d
25 824 at 837, 838, n. 19 and n. 20 (on rehearing) (5th Cir.
26 1964); United States v. Mayton, 335 F. 2d 153, at 158, 159
27 (5th Cir. 1964); United States v. Mintzes, supra, at 1313,
28 1334 (three incidents). United States v. West Peachtree
29 Tenth Corp., supra; United States v. Grooms, supra. In
30 United States v. Alexander and Cloutier Realty Co. (No.
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1 13805, unpublished order of Nov. 3, 1970) (N.D. Ga.),
2 the Court found a pattern or practice on the basis of a
3 single refusal of a dwelling to a Negro and an extra-
4 judicial admission of a racially discriminatory policy
5 to which that refusal conformed. See also, United States v.
6 Gilman, 341 F. Supp. 891, C.A. No. 38355 (S.D. N.Y., March 22,
7 1972) (two incidents of discrimination, both in one of
8 many buildings operated by defendants; one was an implicit
9 statement of discriminatory policy). Accordingly, no
10 minimum number of incidents is required, nor was such a
11 minimum intended. Each case must turn upon its own merits.
12 United States v. West Peachtree Tenth Corp., supra; United
13 States v. Reddoch, supra, at pages 25-26. That some of
14 the identities of the applicants rejected by defendants
15 are unknown (see Findings Nos. 6-10, supra) is immaterial;
16 proof of a discriminatory policy is often made by incidents
17 concerning persons whose race is known but whose name is
18 not. United States v. Real Estate Development Corp.,
19 supra; United States v. Reddoch, supra; United States v.
20 Northside Realty Associates, ____ F. Supp. ____ (C.A. No.
21 13932, N.D. Ga. 1971) (the Detroit professor incident).

25 17. It is no defense to a "pattern or practice"
26 claim of racial discrimination that there was no uniform
27 policy of discrimination. United States v. Ironworkers
28 Local 86, 443 F. 2d 544 at 552 (9th Cir. 1971); United
29 States v. Reddoch, supra; United States v. Real Estate
30 Development Corp., supra. Defendants' claim that there
31 can be no pattern or practice because a few of their
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1 apartment complexes had a sprinkling of blacks in them at
2 the time of the instant suit merely echoes the argument
3 raised and rejected by the Court of Appeals for this
4 Circuit in the Ironworkers case. See also United States v.
5 Gilman, supra, (evidence of two incidents of discrimina-
6 tion occurring at one of defendants' 25 apartment buildings,
7 some of which had black tenants, sustained a finding of
8 pattern or practice and relief as to all buildings).

10 18. Instructions by a resident manager to rental
11 agents to discriminate in various ways against black and
12 Mexican-American applicants are imputable to the defendants
13 and constitute a discriminatory course of conduct, which
14 satisfies the pattern or practice requirements of 42
15 U.S.C. 3613. United States v. Reddoch, supra; United
16 States v. West reachtree Tenth Corp., supra; United States v.
17 Alexander and Cloutier Realty Co., C.A. No. 13805, supra
18 (policy admissions). This is true both as to the direct
19 instructions to discriminate, such as those given by Mrs.
20 Boatwright to several employees (e.g. Linda Tappan and
21 Colleen Watkins) and as to statements and conduct which,
22 while not specifically ordering discrimination, are
23 reasonably calculated to cause subordinates to discriminate
24 (e.g. Mrs. Boatwright's reference to "fairies and niggers"
25 to which Kenneth Romines testified).

28 19. Even though specific acts of agents were in
29 themselves violations of other sections of the Act (e.g.
30 agents violated Section 3604(d) by telling black rental
31 applicants that no apartments were available when one in
32

1 fact was available) the paramount concern of the Court in
2 a pattern or practice case of this kind must be the under-
3 lying violation of Section 3604(a) by the principal --
4 failure to exercise sufficient control over agents, with
5 the effect that housing was made unavailable because of
6 race. Principals who provide an atmosphere in which
7 agents may and do, easily and without supervision or
8 control, make housing unavailable because of race engage
9 in a pattern or practice of discrimination even though
10 no specific instructions were given to agents to do so
11 and even though management gives perfunctory instructions
12 to "treat everyone alike" without any effective effort
13 to insure that the instructions are carried out.

16 20. The "second alternative" of 42 U.S.C. §3613
17 authorizes injunctive relief in favor of the government
18 where there has been a denial of rights granted by the
19 Act to any group of persons and where the Attorney General
20 had determined^{*/} that such denial raises an issue of
21 general public importance. United States v. Reddoch, supra;
22 United States v. Real Estate Development Corp., supra. As
23 the Court said in United States v. Hunter, supra, 459 F.
24 2d at 218, note 17,

27 */ In United States v. Real Estate Development Corp., supra,
28 slip opinion at p. 14, the Court said:

29 As indicated in Reddoch, the Attorney General's
30 determination of general public importance is
31 not reviewable. See United States v. Mitchell,
32 313 F. Supp. 299 (N.D. Ga. 1970); United States v. Greenwood Municipal Separate School District, 406 F. 2d 1086 (5th Cir. 1970) (determination that suit will promote orderly school desegregation).

1 In contrast to the 1964 Act [employ-
2 ment and public accommodations], a pattern
3 or practice of resistance is not an in-
4 dispensable prerequisite for relief.
5 Relief may be based on a single (uninten-
6 tional) violation of the Act when by that
7 violation a group of persons are denied
8 their statutory rights and the case raises
9 an issue of general public importance.
10 Here the rights of all non-whites looking
11 for an apartment were abridged by the [two]
12 illegal advertisements published in The
13 Courier.

14 21. In United States v. Reddoch, supra, slip
15 opinion at 27, the Court said:

16 To determine whether an injunction is
17 appropriate under the "second alternative"
18 of 42 U.S.C. 3613, the court will apply
19 conventional principles of equity. In-
20 junctive relief is appropriate, in cases
21 of this kind, where significant violations
22 of the Act have been shown, irreparable
23 injury being presumed from the fact of
24 such violations, without more. United
25 States v. Hayes International Corp., 415
26 F. 2d 1030 (5th Cir. 1969). Since equity
27 looks to the future, injunctive relief is
28 also appropriate, even in the absence of
29 a showing of past violations, where the
30 defendants' conduct or statements threaten
31 future violations. Swift & Co. v. United
32 States, 276 U.S. 311, 326 (1928); United
States v. W. T. Grant & Co., 345 U.S. 629,
633 (1953).

33 Accord: United States v. Real Estate Development Corp.,
34 supra, slip opinion at 19. Injunctive relief is appro-
35 priate in this case on the sole basis of defendants' dis-
36 criminatory treatment of blacks through their agents.
37 Similarly, an injunction based on the extrajudicial
38 admissions of a discriminatory policy and instructions
39 to discriminate by defendants' agents, standing alone, is
40 justified. The need for such relief is even more cogent
41 when all of these kinds of evidence are considered together.

1 United States v. Reddoch, supra, slip opinion at 27; United
2 States v. Real Estate Development Corp., supra, slip
3 opinion at 15.

4 22. The group of persons whose rights were denied
5 for purposes of the "second alternative" of 42 U.S.C.
6 3613 includes not only the black witnesses and the blacks
7 whose rejections were accomplished or observed by at
8 least four former employees of defendants, but also all
9 those who did not come to apply to the apartments as a
10 result of defendants' conduct and the virtually all-white
11 image of the apartment buildings operated by defendants.
12 See United States v. Hunter, supra, slip opinion at 29,
13 n. 17, 459 F. 2d at 218.

14 23. Defendants claim that no injunctive relief is
15 necessary in this case, as they claim to be ready to obey
16 the law. The defendants' good faith, however, does not
17 justify the withholding of injunctive relief where, as
18 here, the statutory prerequisites for an injunction have
19 been met. United States v. West Peachtree Tenth Corp.,
20 supra. On the contrary, the court held in United States v.
21 Real Estate Development Corp., supra, slip opinion pp.
22 16-17, that

23 . . . [I]n cases of this kind,
24 injunctions should not be granted
25 grudgingly, and their scope should
26 be sufficiently broad to assure non-
27 discrimination. Hodgson v. First
28 Federal Savings & Loan Assn., 455 F. 2d
29 818 (5th Cir. 1972) (age discrimination
30 in employment).

31 In the present case, the active discrimination was done by
32

1 agents of the defendants. If the defendants are enjoined,
2 their agents will be subject to the provisions of the
3 decree and liable for contempt if they violate it.^{*/} There
4 would, however, be no effective control of the agents'
5 conduct if injunctive relief were withheld. Accordingly,
6 the court will issue an injunction which, while keeping
7 federal intrusion into defendants' business practices
8 to the minimum required to assure equal housing opportunity,
9 will at the same time be sufficiently comprehensive to
10 assure compliance by all concerned. United States v. West
11 Peachtree Tenth Corp., supra, 437 F. 2d at 229 et seq.

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14 24. In cases of racial discrimination, ". . . the
15 Court has not merely the power but the duty to render a
16 decree which will so far as possible eliminate the dis-
17 criminatory effects of the past as well as bar like dis-
18 crimination in the future." Louisiana v. United States,
19 380 U.S. 145, 154 (1955). This viewpoint has been carried
20 forward in many areas of the civil rights laws. United
21 States v. Real Estate Development Corp., supra (housing);
22 and Hodgson v. First Federal Savings and Loan Assn., 455
23 F. 2d 818 (5th Cir. 1972) (age discrimination in employment).
24 In United States v. West Peachtree Tenth Corp., supra, a
25 case involving rental discrimination at an apartment house,
26 the Court of Appeals for the Fifth Circuit directed the
27 entry by the District Court of a specific prescribed decree,
28 which was obviously designed to be a model for District
29 Courts to follow in comparable cases. See United States v.
30 Hunter, supra; United States v. Reddoch, supra. Accordingly,
31
32 */ See Rule 65, F.R.C.P.

1 as in Peachtree, an appropriate decree in this case should:

2 (a) Prohibit all conduct by the
3 defendants which has the purpose or
4 effect of discriminating on account
5 of race with regard to housing oppor-
6 tunities, such prohibition to include,
7 in this case, any requirement that
8 applicants for rental secure recom-
9 mendations from incumbent tenants;
10

11 (b) Require the defendants to adopt
12 and implement objective, reviewable
13 standards and procedures, so that covert
14 subversion of the purposes of the decree
15 will not occur. United States v. West
16 Peachtree Tenth Corp., supra; Local 53,
17 Asbestos Workers v. Vogler, 407 F. 2d
18 1047, 1055 (5th Cir. 1969). These
19 standards should be no more stringent
20 than those previously applied to whites,
21 Louisiana v. United States, supra; United
22 States v. Duke, 332 F. 2d 759 (5th Cir.
23 1964). No practices which place blacks
24 at a disadvantage are permissible, no
25 matter how innocently motivated, in the
26 absence of a compelling showing of
27 business necessity. Griggs v. Duke
28 Power Co., supra.
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1 (c) Require the defendants to take
2 affirmative steps to correct the effects
3 of their past discriminatory practices
4 and eliminate Tan's discriminatory image,
5 so that Negroes have the same practical
6 opportunity as white persons to rent
7 apartments; Louisiana v. United States,
8 supra; United States v. West Peachtree
9 Tenth Corp., supra. The racial character
10 of defendants' work force is relevant to
11 their image, and the decree in this case should
12 therefore require nondiscrimination in employ-
13 ment practices as a remedy for discrimination
14 in housing, even though no discrimination in
15 employment is alleged in the complaint. See
16 United States v. Northside Realty Associates,
17 ____ F. Supp. ____ (No. 13932, N.D. Ga. Dec. 30,
18 1971); (prohibits discrimination in engagement
19 of services of sales personnel in housing unit);
20 United States v. Mitchell, 335 F. Supp 1004
21 (N.D. Ga. 1971) (defendants in "blockbusting
22 suit" required to instruct their agents not to
23 discriminate in housing or employment).
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ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, it is HEREBY ORDERED, ADJUDGED AND DECREED that the defendant Youritan Construction Company, d/b/a Tan Construction Company, and its owners, officers, agents, employees, successors and all persons in active concert or participation with any of them, are permanently enjoined with respect to the operations of all apartment buildings owned, managed or controlled by them now or in the future from:

1. Making unavailable or denying any dwelling to any person on account of race, color or national origin.

2. Discriminating against any person in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color or national origin.

3. Making, printing, or publishing, or causing to be made, printed, or published, any notice, statement, or advertisement, with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, or national origin.

4. Representing to any person because of race, color, or national origin that any dwelling is not available for inspection or rental when such dwelling is in fact available.

5. Failing or refusing to hire, assign, promote or recruit any employee or prospective employee on account

1 of race, color, religion or national origin, or engaging
2 in any discriminatory employment practice within the
3 meaning of 42 U.S.C. 2000e et seq.

4 IT IS FURTHER ORDERED that the defendants^{*/} shall
5 forthwith adopt and implement an affirmative program of
6 compliance with the provisions of the Fair Housing Act
7 in order to insure that in the future all apartments will
8 be available for inspection by and rental to black and
9 other nonwhites on the same basis that they are made
10 available for inspection by and rental to white persons.
11 This program shall include the following:
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13 A. The defendants shall, within 30 days of the
14 entry of this Order, conduct an educational program for
15 its rental personnel and other agents and employees to
16 inform them of the provisions of this Order and their
17 duties under the Fair Housing Act. Such program shall
18 include the following:
19

20 1. A copy of this Order shall be furnished
21 to each agent and employee.
22

23 2. By general meeting or individual
24 conference, the defendants shall inform
25 each agent and employee of the provisions
26 of this Order and of the duties of the
27 defendants and their agents and employees
28 under the Fair Housing Act. Each agent
29

30 */ This term includes Youritan Construction Company and
31 all persons or other entities subject to this Order as
32 described in the first paragraph of this Order.

1 and employee shall also be informed that his
2 failure to comply with the provisions of
3 this Order shall subject him to dismissal
4 or other appropriate disciplinary action.

5 3. Each agent and employee shall sign
6 a statement that he has read this Order
7 and that he fully understands his respon-
8 sibilities thereunder.

9 4. The above stated program shall be
10 given within 15 days of the entry of this
11 Order, and thereafter, upon the hiring of
12 any new employee, within 5 days of the
13 commencement of his duties.

14 B. The defendants shall inform the public generally
15 and their customers and clients specifically of the
16 defendants' nondiscriminatory policy by the following
17 actions:

18 1. Each of defendants' application
19 forms and lease agreements shall contain a
20 prominent statement that apartments will be
21 shown and made available for rental to all
22 persons without regard to race, color,
23 religion or national origin in compliance
24 with the 1968 Fair Housing Act, 42 U.S.C.
25 3604. In addition, at the time of applica-
26 tion, prospective tenants of the defendant
27 are to be orally informed of this provision
28 and of the defendants' uniform rental
29
30
31
32

1 application standards and procedures,
2 including financial requirements, credit
3 checks, waiting periods, etc.

4 2. All advertising of apartments at
5 apartments complexes owned or operated by
6 defendants in newspapers or other media^{*/}
7 including radio and TV and in billboards,
8 pamphlets, brochures, handouts, and
9 writings of any kind, shall include a
10 statement prominently placed and easily
11 legible to the effect that apartments are
12 rented without regard to race, color,
13 religion or national origin.

14 3. The defendants shall periodically
15 (at least once every month for the first
16 year following the entry of this Order and
17 once every three months thereafter) place
18 conspicuous advertisements in the public
19 media which are directed primarily at the
20 black sector of the San Francisco and mid-
21 peninsula area, such as The Oakland Tribune,
22 481 Market Street, San Francisco, California
23 (415-392-5890), stating that defendants
24 have apartments available for rental
25 throughout the Palo Alto - Mountain View
26 area.

27
28
29
30
31
32 ^{*/} In radio advertising, the equal opportunity statement
shall be easily audible.

1 4. On the 1st and 15th day of each
2 month, the defendants shall post and
3 maintain (1) a list of actual and expected
4 vacancies at all buildings in their central
5 office at 3630 El Camino Real, Palo Alto,
6 California, and (2) a list of actual
7 vacancies at each individual apartment
8 complex owned now or in the future by any
9 defendant at the rental office of such
10 apartment complex.
11

12 5. The defendants shall give notice
13 on or about the first day of each month
14 to appropriate representatives of the non-
15 white community of existing and expected
16 vacancies at all of the apartment buildings
17 owned or operated by them. The parties
18 shall, within fifteen days of the entry
19 of this Order, attempt to agree on the
20 identities of appropriate representatives
21 of the nonwhite community. If the parties
22 are unable to agree, such representatives
23 shall be designated by the Court.
24
25

26 6. Within thirty days of the entry of
27 this Order, the defendants shall permanently
28 post in a conspicuous location in the
29 defendants' business office at 3630
30 El Camino Real, Palo Alto, California,
31 or immediately outside the office, a notice
32

1 or sign, clearly visible to prospective
2 applicants, stating that defendant rents
3 dwellings on a racially nondiscriminatory
4 basis. In addition, the defendants shall
5 place a "Fair Housing" notice or sign of
6 the type described in the preceding sentence
7 in a prominent place in the rental office
8 or immediately outside the rental office
9 of each apartment building which it owns
10 or operates. All signs to be posted
11 pursuant to this Order shall be in conformity
12 with pertinent regulations of the Secretary
13 of HUD, 37 F.R. 3429 et seq. A copy of
14 said regulations is attached hereto as
15 Appendix "C".
16

17
18 C. The defendants shall establish and implement
19 uniform, objective and nondiscriminatory standards and
20 procedures for the processing, evaluation and approval
21 of applications, which shall insure that prospective
22 tenants are accorded an informed choice of apartments at
23 all of defendants' complexes. These standards and pro-
24 cedures shall not be more onerous or stringent than
25 those heretofore applied to white applicants. Within 30
26 days of the entry of this Order, defendants shall file
27 with the Court, with copies to plaintiff, of the proposed
28 standards and procedures. Plaintiff shall have twenty
29 days from receipt of these standards and procedures to
30 file objections with the Court. If plaintiff files no
31
32

1 objection, and if the Court makes no contrary ruling
2 sua sponte, these standards and procedures shall be
3 adopted without further order of the Court.

4 If after the adoption and approval of objective
5 standards and procedures, the defendants desire to alter
6 them, they may do so, provided that any changes are objective
7 in writing, and non-racial in purpose and effect. If any
8 such change is made within three years of the entry of
9 this Order, it shall be filed with the Court, with copies
10 to plaintiff, and any dispute arising from such proposed
11 change may be raised by either party in any subsequent
12 appropriate proceeding in this Court.
13

14
15 IT IS FURTHER ORDERED that the defendants shall for
16 three years following the entry of this Order, make, keep
17 and preserve the following records for all of the apartment
18 complexes which they own and/or operate:

19 (a) The name, address and race of each
20 person inquiring in person about the
21 availability or terms of rental of an
22 apartment therein, the date, and whether:
23

- 24 1. He was offered an application.
- 25 2. He filled out an application.
- 26 3. He submitted an application.
- 27 4. The application was sent to
28 the central office.
- 29 5. He made a deposit.
- 30 6. He was accepted for waiting list.
- 31
- 32

1 7. His application was approved
2 and he was accepted for occupancy.

3 8. His application was rejected,
4 and, if so, the reasons therefor.

5 (b) The number of apartments available
6 on each of the above dates, the type of
7 apartments (i.e., one bedroom, two bedroom,
8 etc.) available, the type of apartment
9 requested by each person, and all vacancy
10 and other information required to be
11 reported to the Court under the reporting
12 provisions of this Order.
13

14 IT IS FURTHER ORDERED, that ninety days after the
15 entry of this Order, and at three-month intervals there-
16 after for a period of three years following the entry of
17 this Order, the defendants shall file with this Court,
18 and serve on counsel for the plaintiff, a report containing
19 the following information for each apartment they own
20 and/or operate:
21

22 (a) The name, address and race of each
23 person making inquiry about the availability
24 or terms of rental of an apartment during
25 the preceding three-month period, and
26 whether such person:
27

- 28 1. Made inquiry.
29 2. Was offered an application.
30 3. Filled out an application.
31 4. Submitted an application.
32

1 5. Had their application sent to
2 the central office.

3 6. Made a deposit.

4 7. Were accepted for the waiting
5 list.

6 8. Were accepted for occupancy.

7 9. Were rejected, and if rejected,
8 the reasons therefor.

9
10 Said defendants shall further report, with respect to each
11 vacancy at each apartment complex owned or operated by
12 any of them during the reporting period,

13 (a) The building and the apartment
14 number;

15 (b) The date notification was received
16 that the apartment would become available
17 for rent;

18 (c) The date the apartment became
19 available for rent;

20 (d) The date the apartment was no
21 longer available for rent; and

22 (e) The date that the apartment was
23 occupied by a new tenant and the name and
24 race of the new occupany or occupants.

25
26
27 Additionally, for each apartment complex owned or operated
28 by any of them, the defendants shall include in the first
29 report the number of persons or families, by race who are
30 residing there at the time of the entry of this Order.*/
31

32 */ This information should set out the number of units
occupied by persons of each race.

1 In the event that defendants acquire any other apartment
2 building subsequent to the entry of this Order, they shall
3 furnish plaintiff's counsel with the location and name
4 (if there is one) of such apartment building and the
5 racial composition of the building by unit. Further, if
6 defendants sell or otherwise dispose of any apartment
7 building owned or operated by them at the time of the
8 entry of this Order, they shall furnish plaintiff's
9 counsel with the location and the name (if there is one)
10 of the apartment building. Such notification shall be
11 provided within 20 days of the effective date of the
12 change, or at the time the next report is due, whichever
13 is earlier.
14

15
16 The first report^{*/} to be filed hereunder shall
17 describe the preliminary affirmative steps defendants
18 have taken to implement the provisions of this Order.
19 The report shall include, among the other things set
20 forth in Part II, sample copies of all advertising used
21 by defendants, copies or descriptions of all signs posted
22 in accordance with this Order, apartment vacancy reports
23 and written documentation to the effect that each agent
24 or employee has received a copy of this Order and has
25 been advised of its terms.
26

27 IT IS FURTHER ORDERED THAT:

28
29 1. The defendants' keeping of racial records for
30 the purpose of complying with this Order shall not be

31 ^{*/} This report shall contain information regarding the number
32 of persons by race who are residing at each of the apartment
buildings owned or operated by defendants at the time of the
entry of the Order.

1 considered discriminatory.

2 2. Representatives of the United States shall be
3 permitted to inspect and copy all pertinent records of
4 the defendants at any and all reasonable times, provided,
5 however, that the United States shall endeavor to
6 minimize any inconvenience to the defendants caused by
7 the inspection of such records.
8

9 IT IS FURTHER ORDERED that the plaintiff shall
10 recover of the defendants its costs of suit.

11 The Court shall retain jurisdiction of this action
12 for all purposes.

13 ORDERED this day of , 1972.
14
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16

17 United States District Judge
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Apartment	Began Operation	Number of Units	Bedroom Size	Rental Price Range and Security Deposit	Number of Blacks at Time of Suit	Date of Rental to First Black Tenant
Americana 707 Continental Circle Mountain View, Calif.	October 1969	486 unfurnished	1,2,&3 bedrooms	\$175-360 \$150-250	0	September 1971
Tan Manor 535 Everett Avenue Palo Alto, Calif.	December 1964	90 furnished & unfurnished	Studios	\$160-200 1 month's rent	0	None
Tan Plaza Continental 580 Arastradero Road Palo Alto, Calif.	August 1965	61 unfurnished	1,2,&3 bedrooms	\$255-495 1 month's rent	0	None
Poinciana Park Klamath and Hartford Santa Clara, Calif.	February 1970	55 unfurnished	1,2,&3 bedrooms	\$160-290 \$120-220	0	June 1971
Sunshine Gardens 132-150 West Dana Mountain View, Calif.	February 1970	44 furnished & unfurnished	1,2,&3 bedrooms	\$145-270 1 month's rent	0	None
No. 733-743 Waverly Street Palo Alto, Calif.	March 1961	6 unfurnished	1 & 2 bedrooms	\$150-180 1 month's rent	0	None
Tan Plaza International 535 Arastradero Road Palo Alto, Calif.	August 1963	44 furnished & unfurnished	Studios, 1,2,&3 bedrooms	\$170-350 1 month's rent	1	January 1970

* This information was obtained from Plaintiff's Exhibit 5 and Defendants' Exhibit 1.

APPENDIX "A" (cont'd)

Apartment	Began Operation	Number of Units	Bedroom Size	Rental Price Range and Se- curity Deposit	Number of Elacks at Time of Suit	Date of Rental to First Black Tenant
No. 5 Newell Road Palo Alto, Calif.	February 1969	12 furnished & unfurnished	1 & 2 bedrooms	\$145-200 1 month's rent	2	February 1969
Tan House 5, 35, 45, 55 Newell Road Palo Alto, Calif.	September 1962	120 furnished & unfurnished	Studios, 1 & 2 bedrooms	\$120-210 1 month's rent	5	December 1970
Tan Village 1071-1094 Tanland Drive Palo Alto, Calif.	August 1964	168 furnished & unfurnished	1,2,&3 bedrooms	\$145-390 \$120-320	4	June 1968
Tan Plaza 535 Arastradero Road Palo Alto, Calif.	December 1959	37 furnished & unfurnished	Studios, 1,2,&3 bedrooms	\$140-240 1 month's rent	2	September 1970

APPENDIX B

EXPERIENCES OF WHITE AND BLACK TESTERS
AND BLACK BONA FIDES AT TAN APARTMENT COMPLEXES

Name of Witness	Name of Apartment Complex	Date of Inquiry	Was Witness Told Credit Check Or Other Delay For Processing Application?		Was Witness Told That Type of Unit Asked For Was Available?		Actual Existence of Vacancies Per Defendants' Records	Source of Supporting Testimony
			YES	NO	YES	NO		
<u>WHITE WITNESSES</u>								
Gross	Tan House	1-24-71		X	X			RT-I 173-175 (A-5)
Bredt	Tan House	9-11-69				X 1/		D. Ex. BA pp. 14-15 RT-II 123-127
Gross	Tan Manor	1-24-71		X	X			RT-I 174-175, 181, 195
Murphy	Tan Manor	7-14-71			X			RT-II 242-245
Gross	Tan Village	1-24-71		X	X			RT-I 174-179
Gross	Americana	2-7-71		X	X			RT-I 175-176, 234
Brandt	Americana	1-6-71		X	X			P.Ex.4-a, RT WB-12-17, 52-53, 71-73

1/ Bredt was told that a 1 bedroom apartment would be available in 3 days and was invited back to see similar apartment next day.

APPENDIX B (Cont'd)

Name of Witness	Name of Apartment Complex	Date of Inquiry	Was Witness Told Credit Check or Other Delay For Processing Application?		Was Witness Told That Type of Unit Asked For Was Available?		Actual Existence of Vacancies Per Defendants' Records	Source of Supporting Testimony
			YES	NO	YES	NO		
Smith	Americana	1-6-71		X	X			P. Ex. No.4 (b)
Gross	Sunshine Gardens	2-7-71		X	X			RT-I 177-178, 212-213
Gross	Tan Plaza International	2-7-71		X	X			RT-I 179-180, 228-229
Gross	Tan Plaza	2-7-71		X	X			RT-I 180-181, 230-233
Smith	Tan Plaza	1-6-71		X		X		P. Ex. No.4 (b)
Gross	Tan Plaza Continental	2-7-71		X		X		RT-I 178-179, 222-227, 233
Smith	Tan Plaza Continental	1-6-71		X	X			P. Ex. No. 4 (b)

APPENDIX B (Cont'd)

Name of Witness	Name of Apartment Complex	Date of Inquiry	Was Witness Told Credit Check Or Other Delay For Processing Application?		Was Witness Told That Type of Unit Asked For Was Available?		Actual Existence of Vacancies Per Defendants' Records	Source of Supporting Testimony
			YES	NO	YES	NO		
<u>BLACK WITNESSES</u>								
Johnson	Tan House	1-24-71				X	1	RT-II 187-188, 202 P. Ex. 1 (A-5)
Fitch	Tan House	9-11-69				X ^{2/}		RT-II 81-87 D. Ex. AK, BA, & U
Evans	Tan House	9-12-69				X ^{3/}		RT-II 150-155
Davenport	Tan House	mid.Aug.-70				X	1	P. Ex. 1 (B-1)
Johnson	Tan Manor	1-24-71	X		X			RT-II 188-190, 202

2/ Fitch was told that a 1-bedroom apartment would be available in 16 days and quoted a rental price \$20 higher than white witness in footnote 1.

3/ Evans requested a 1-bedroom apartment and was told that only a studio apartment was available. He was also told that a 1-bedroom apartment would not be available for 8 days. He also inquired about the price of a 1-bedroom apartment and was quoted a rent of \$185 per month, which was \$20 in excess of rent quoted to white witness. (See footnote 1).

APPENDIX B (Cont'd)

Name of Witness	Name of Apartment Complex	Date of Inquiry	Was Witness Told Credit Check Or Other Delay For Processing Application?		Was Witness Told That Type of Unit Asked For Was Available?		Actual Existence of Vacancies Per Defendants' Records	Source of Supporting Testimony
			YES	NO	YES	NO		
Wimberly	Tan Manor	7-14-71				X	10 ^{4/}	RT-II 270-273, P. Ex. 2 D. Ex. AS, pp. 25-26, 42-43
Johnson	Tan Village	1-24-71	X			X	9 ^{5/}	RT-II 190, 202, P.Ex.1(A4)
Davenport	Tan Village	mid Aug.-70				X ^{6/}	1	P. Ex. 1 (B-2), see week of Aug. 9 and 16, 1970
Johnson	Americana	2-7-71	X		X			RT-II 190-192, 202

4/ In addition, four studios were to become vacant by 8-14-71.

5/ In addition, three 2-bedroom apartments were to become vacant by 2-8-71.

6/ Mrs. Roberts did not, however, tell Mrs. Davenport about Apartment No. 90/104, an unfurnished 1-bedroom apartment which was vacant at the time. (See P. Ex. 1, Part B(2). Particular reference should be made to the weekly vacancy reports for August 9 and 16, 1970.)

APPENDIX B (Cont'd)

Name of Witness	Name of Apartment Complex	Date of Inquiry	Was Witness Told Credit Check Or Other Delay For Processing Application?		Was Witness Told That Type of Unit Asked For Was Available?		Actual Existence of Vacancies Per Defendants' Records	Source of Supporting Testimony
			YES	NO	YES	NO		
McCullen	Americana	1-6-71	X ^{7/}		X			RT-AM 8-10, 12, 15-16 P. Ex. 4-c
Johnson	Sunshine Gardens	2-7-71	X			X		RT-II 192-193, 202
Johnson	Tan Plaza International	2-7-71	X			X		RT-II 194, 202
Johnson	Tan Plaza	2-7-71	X			X		RT-II 193, 202
McCullen	Tan Plaza	1-6-71	X			X		P. Ex. 4(c), RT-AM, pp.16-1
Johnson	Tan Plaza Continental	2-7-71	X		X			RT-II 193-194, 202 D. Ex. AR, p. 65
McCullen	Tan Plaza Continental	1-6-71	X		X			P. Ex. 4(c), RT-AM, pp.18-2

^{7/} McCullen was quoted a security deposit which was \$40 more than the two white testers (i.e., Brandt and Smith) who went to the Americana on the same day.

broker or agent is handling the sale or rental, he must display the poster at any place of business where the dwelling is being offered for sale or rental. With respect to all other dwellings covered by the Act, the poster must be displayed at any place of business where the dwelling is offered for sale or rental; in addition, the poster must be displayed at the dwelling, except that in the case of a single-family dwelling being offered for sale or rental in conjunction with the sale or rental of other dwellings, e.g., a subdivision, the poster may be displayed at model homes instead of at each of the individual dwellings. Finally, in the case of dwellings other than a single-family dwelling not being offered for sale or rental in conjunction with the sale or rental of other dwellings, the poster must be displayed from the beginning of construction through the end of the sale or rental process.

Several comments suggested revisions in the language of the poster described in proposed § 72.25. Such suggestions included rewriting the poster in terms of the individual's rights, rather than the Act's prohibitions, adding additional prohibitions contained in the Act, emphasizing the nature of penalties for failure to post, and listing the HUD area office instead of the regional office as a location to which to send complaints. The new § 110.25 adopts the suggestion with regard to the area offices in that the poster will provide for insertion of the address of the regional or area office as appropriate. It has been decided that instead of lengthening the content of the poster by adding additional prohibitions, the poster should be made shorter and easier to understand by briefly highlighting the major prohibitions. In addition, the Equal Housing Opportunity logotype and slogan have been inserted at the top of the poster.

A comment by the Federal Home Loan Bank Board (FHLBB) recommended exempting from this regulation any person subject to a regulation of the FHLBB requiring that person to post a poster substantially similar in content to the poster described in HUD's regulation. A similar comment was made by the Board of Governors of the Federal Reserve System with respect to entities subject to supervision by any of the four Federal financial regulatory agencies. The Department will authorize a person subject to the jurisdiction of a Federal financial regulatory agency to utilize a poster prescribed in a regulation by such agency, and approved by the Department, instead of the poster prescribed by HUD. However, all of the other requirements of Part 110 will remain fully applicable regardless of whatever sanctions the regulatory agency prescribes for failure to comply with its regulation. This provision is set forth in § 110.25(b). The requirement, set forth in § 110.10(c), that financial institutions post and maintain a fair housing poster will not be effective until May 1, 1972, in order to allow time for the Federal financial regulatory agencies to issue appropriate regulations.

Proposed § 72.30 stated that a failure to display the poster as required would be

deemed a discriminatory housing practice, i.e., an act unlawful under sections 804, 805, and 806 of title VIII, and prima facie evidence of a violation of those sections, as applicable. There were comments favoring this provision and a comment stating that such a provision was beyond the Department's authority on the ground that title VIII prescribes the specific acts of discrimination which are unlawful. There was also a comment recommending that failure to comply should subject a person to suspension from eligibility for FHA insurance.

The Department believes that it has the authority to require a fair housing poster, and that proposed § 72.30 does not prescribe a new violation not provided for in title VIII. Rather, the section provides an appropriate evidentiary mechanism for assisting in the determination of whether a violation of title VIII has occurred. For purposes of clarity, the provision has been combined with proposed § 72.25—complaints—into a new § 110.30—Effect of failure to display poster—and the combined text shortened. Under § 110.50, when a person claiming to have been injured by a discriminatory housing practice files a complaint pursuant to Part 105—Fair Housing, a failure to display the required poster shall be deemed prima facie evidence of such practice.

The comment with respect to application of additional sanctions is rejected, since such sanctions as well as others are provided in the Affirmative Fair Housing Marketing Regulations published January 5, 1972 (37 F.R. 75), for failure to make the posting required at FHA project sites by § 200.620(f) of that regulation. Although Part 110 is applicable to some persons who are not covered by the Affirmative Fair Housing Marketing regulations, the Department considers that the insertion in Part 110 of the sanctions proposed in the comment is not appropriate.

Accordingly, a new Part 110 is added to Title 24 to read as follows:

Subpart A—Purpose and Definitions

- Sec.
110.1 Purpose.
110.5 Definitions.

Subpart B—Requirements for Display of Posters

- 110.10 Persons subject.
110.15 Location of posters.
110.20 Availability of posters.
110.25 Description of posters.

Subpart C—Enforcement

- 110.30 Effect of failure to display poster.

Authority: The provisions of this Part 110 are issued under section 7(d) of the Department of Housing and Urban Development Act of 1968 (42 U.S.C. 3603(d)).

Subpart A—Purpose and Definitions

§ 110.1 Purpose.

The regulations set forth in this part contain the procedures established by the Secretary of Housing and Urban Development with respect to the display of a fair housing poster by persons subject to sections 804–806 of the Civil Rights Act of 1968, 42 U.S.C. 3604–3606.

Title 24—HOUSING AND URBAN DEVELOPMENT

Chapter I—Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development

SUBCHAPTER A—FAIR HOUSING

[Docket No. R-72-165]

PART 110—FAIR HOUSING POSTER

The purpose of this regulation is to require the display of a fair housing poster by persons subject to sections 804–806 of the Civil Rights Act of 1968 and to prescribe the content of this poster.

Notice of a proposed amendment to Title 24 to include a new Part 72 was published in the Federal Register on August 4, 1971 (36 F.R. 14336). (Under the reorganization of Title 24 published in the Federal Register on December 22, 1971 (36 F.R. 24402), the fair housing poster will become new Part 110.) Comments were received from approximately 20 interested persons and organizations and consideration has been given to each comment.

Some comments with respect to proposed § 72.10 criticized the coverage of the proposed regulation as too broad, while other comments objected that the coverage is too narrow, and various suggestions were made for changes in coverage. Comments were directed not only to what dwellings should be included but also to the stage at which the requirement should take effect and the persons to whom it should apply. In response to the comments, § 72.10(a) (now § 110.10 (a) and (b)) has been revised to clarify the extent of coverage, to broaden coverage to the extent appropriate and to eliminate unnecessary burdens where the requirement can appropriately be narrowed or eliminated. Under § 110.10 (a) and (b), display of the prescribed poster at a single-family dwelling is not required unless the dwelling is being offered for sale or rental in conjunction with the sale or rental of other dwellings; however if a real estate

§ 110.5 Definitions.

(a) "Department" means the Department of Housing and Urban Development.

(b) "Discriminatory housing practice" means an act that is unlawful under section 801, 805, or 806 of title VIII.

(c) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(d) "Family" includes a single individual.

(e) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

(f) "Secretary" means the Secretary of Housing and Urban Development.

(g) "Fair housing poster" means the poster prescribed by the Secretary for display by persons subject to sections 804-806 of the Civil Rights Act of 1968.

(h) "The Act" means title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601 et seq.

(i) "Person in the business of selling or renting dwellings" means a person as defined in section 803(c) of the Act.

Subpart B—Requirements for Display of Posters

§ 110.10 Persons subject.

(a) Except to the extent that paragraph (b) of this section applies, all persons subject to section 804 of the Act, Discrimination in the Sale or Rental of Housing, shall post and maintain a fair housing poster as follows:

(1) With respect to a single-family dwelling (not being offered for sale or rental in conjunction with the sale or rental of other dwellings) offered for sale or rental through a real estate broker, agent, salesman, or person in the business of selling or renting dwellings, such person shall post and maintain a fair housing poster at any place of business where the dwelling is offered for sale or rental.

(2) With respect to all other dwellings covered by the Act:

(i) A fair housing poster shall be posted and maintained at any place of business where the dwelling is offered for sale or rental, and

(ii) A fair housing poster shall be posted and maintained at the dwelling, except that with respect to a single-family dwelling being offered for sale or rental in conjunction with the sale or rental of other dwellings, the fair housing poster may be posted and maintained at the model dwellings instead of at each of the individual dwellings.

(3) With respect to those dwellings to which subparagraph (2) of this paragraph applies, the fair housing poster must be posted at the beginning of construction and maintained throughout the period of construction and sale or rental.

(b) This part shall not require posting and maintaining a fair housing poster:

(i) On vacant land, or

(ii) At any single-family dwelling, unless such dwelling

(a) Is being offered for sale or rental in conjunction with the sale or rental of other dwellings in which circumstances a fair housing poster shall be posted and maintained as specified in paragraph (a)(2)(ii) of this section, or

(b) Is being offered for sale or rental through a real estate broker, agent, salesman, or person in the business of selling or renting dwellings in which circumstances a fair housing poster shall be posted and maintained as specified in paragraph (a)(1) of this section.

(c) All persons subject to section 805 of the Act, Discrimination in the Financing of Housing, shall post and maintain a fair housing poster at all their places of business which participate in the financing of housing.

(d) All persons subject to section 806 of the Act, Discrimination in the Provision of Brokerage Services, shall post and maintain a fair housing poster at all their places of business.

§ 110.15 Location of posters.

All fair housing posters shall be prominently displayed so as to be readily apparent to all persons seeking housing accommodations or financial assistance or brokerage services in connection therewith as contemplated by sections 804-806 of the Act.

§ 110.20 Availability of posters.

All persons subject to this part may obtain fair housing posters from the Department's regional and area offices. A facsimile may be used if the poster and the lettering are equivalent in size and legibility to the poster available from the Department.

§ 110.25 Description of posters.

(a) The fair housing poster shall be 11 inches by 14 inches and shall bear the following legend:



We Do Business in Accordance With the Federal Fair Housing Law

(Title VIII of the Civil Rights Act of 1968)

IT IS ILLEGAL

TO DISCRIMINATE AGAINST

ANY PERSON BECAUSE OF RACE,

COLOR, RELIGION, OR NATIONAL ORIGIN

• In the sale or rental of housing or residential lots.

• In advertising the sale or rental of housing.

• In the financing of housing.

• In the provision of real estate brokerage services.

• Blockbusting is also illegal.

Anyone who feels he has been discriminated against should send a complaint to:

U.S. Department of Housing and Urban Development, Assistant Secretary for Equal Opportunity, Washington, D.C. 20410

or HUD Region or

[Area Office stamp]

(b) The Assistant Secretary for Equal Opportunity may grant a waiver permitting the substitution of a poster prescribed by a Federal financial regulatory agency for the fair housing poster described in paragraph (a) of this section. While such waiver remains in effect, compliance with the posting requirements of such regulatory agency shall be deemed compliance with the posting requirements of this part. Such waiver shall not affect the applicability of all other provisions of this part.

Subpart C—Enforcement

§ 110.30 Effect of failure to display poster.

Any person who claims to have been injured by a discriminatory housing practice may file a complaint with the Secretary pursuant to Part 105 of this chapter. A failure to display the fair housing poster as required by this part shall be deemed prima facie evidence of a discriminatory housing practice.

Effective date. This part shall be effective February 25, 1972, except for § 110.10(c) which shall be effective May 1, 1972.

SAMUEL J. SIMMONS,
Assistant Secretary
for Equal Opportunity.

[FR Doc.72-2262 Filed 2-15-72;8:45 am]

CERTIFICATE OF SERVICE

I, Elliott D. McCarty, attorney for the plaintiff,
hereby certify that I have served a copy of the attached
Plaintiff's Proposed Findings of Fact and Conclusions of
Law and Decree on the defendants by mailing a copy to
their attorneys at the addresses set forth below:

Gerald B. Hansen, Esquire
Bressani, Hansen and Blos
Attorneys at Law
1205 Bank of America Building
12 South First Street
San Jose, California 95113

Gerald B. Ferrari, Esquire
Suite 325
550 Hamilton Avenue
Post Office Box 559
Palo Alto, California 94301

On this 21 day of September, 1972.

Elliott D. McCarty
ELLIOTT D. McCARTY
Attorney
Department of Justice
Washington, D. C. 20530